

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

EDDIE EARL ARRINGTON

PETITIONER

VERSUS

CIVIL ACTION NO. 1:11-cv-316-HSO-RHW

**STATE OF MISSISSIPPI and
CHRISTOPHER EPPS**

RESPONDENTS

**ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING RESPONDENTS' AND PETITIONER'S MOTIONS TO DISMISS,
AND DISMISSING WITHOUT PREJUDICE
PETITION FOR WRIT OF HABEAS CORPUS**

This cause comes before the Court on the Report and Recommendation [11] of United States Magistrate Judge Robert H. Walker, entered in this cause on June 28, 2012, and the Motions to Dismiss of Respondents State of Mississippi and Christopher Epps [10] and of Petitioner Eddie Earl Arrington [13]. The Magistrate Judge reviewed Petitioner's Petition for Writ of Habeas Corpus [1] filed pursuant to 28 U.S.C. § 2254 and Respondents' Motion to Dismiss [10], and determined that the Motion to Dismiss [10] should be granted. Report and Recommendation [11], at p. 4. The Magistrate Judge recommended that Petitioner's Petition for Writ of Habeas Corpus [1] be dismissed with prejudice for failure to state a claim upon which relief can be granted, or alternatively, without prejudice for failure to exhaust state remedies.

Petitioner filed no response in opposition to Respondents' Motion [10]. Nor has he filed any objection to the Magistrate Judge's Report and Recommendation [11]. Rather, on August 9, 2012, Petitioner filed his own Motion to Dismiss [13],

requesting that his case be dismissed until such time as he “may exhaust any and all remedies available to him and such time that he might be able to present evidence that will show he is not time barred by state and federal law.” Mot. to Dismiss [13], at p.1.

Where no party has objected to the Magistrate Judge’s Report and Recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) (“a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge’s findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. Petitioner appears to concede that he must exhaust his available remedies. Mot. to Dismiss [13], at p.1. For the foregoing reasons, the Court will adopt the Magistrate Judge’s Report and Recommendation [11] as the opinion of this Court. Petitioner Eddie Earl Arrington’s Petition for Writ of Habeas Corpus [1] will be dismissed without prejudice for failure to exhaust state remedies.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [11] of Magistrate Judge Robert H. Walker, entered on June 28, 2012, is adopted in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion to Dismiss [10] filed by Respondents State of Mississippi and Christopher Epps on December 19, 2011, and the Motion to Dismiss [13] filed by Petitioner Eddie Earl Arrington on August 9, 2012, are both **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Petitioner Eddie Earl Arrington's Petition for Writ of Habeas Corpus [1], pursuant to 28 U.S.C. § 2254, is **DISMISSED WITHOUT PREJUDICE**. A separate judgment in accordance with this Order will be entered, as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 13th day of August, 2012.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE